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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,202	02/27/2004	Friend K. Bechtel		9067

7590
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11/03/2005

EXAMINER

MILLS, DANIEL J

ART UNIT PAPER NUMBER

3679

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/789,202		BECHTEL, FRIEND K.	
	Examiner		Art Unit	
	Daniel J. Mills		3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of species 1 in the reply filed on 9/19/2005 is acknowledged. Applicant cancelled all claims to non-elected species, this election requirement is made final.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it unclear whether "the projected longitudinal axis" line 11 refers to the centerline of the longitudinal element. For the purpose of examination, it will be assumed this is what applicant meant.

Regarding claim 3, it is unclear what the dimension given in describing "a ½ inch steel flat washer" (line 2) refers to (i.e. thickness, outer diameter, etc.).

Regarding claim 11, it is unclear what constitutes a "conventional steel T-post" line 2.

Claim 1 recites the limitation "the projected longitudinal axis" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by MontGuide.

Regarding claim 1, MontGuide discloses a T-post extender (Figure 2) having a longitudinal axis comprising an elongated longitudinal element (3/8 inch rebar or fiberglass rod) with exterior in the shape of a cylinder having maximum extent in any direction perpendicular to the longitudinal axis of about 1/2 inch (13 mm) (3/8 is about 1/2 inch), and able to withstand bending moments in any direction perpendicular to the longitudinal axis of at least 200 pound-inch (23 nt-m) (applicant's disclosure asserts this for 3/8 inch rebar); a stop element surrounding the longitudinal element (the insulators attaching the rod to the T-post), the stop element in a selected position along the longitudinal axis, the selected position being relative to the longitudinal element, the stop element having maximum extent in the longitudinal axial direction of less than about 2 inch (51 mm) (clearly the case from the scale of Figure 2), and, when projected in any direction perpendicular to the longitudinal axis, having at substantially a first end of its extent in the longitudinal axial direction a projected profile that extends at least 1/2 inch (13 mm) in both directions measured perpendicularly from the projected longitudinal axis (it is clear the insulator extends this far in several directions) and an

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attachment means for fixing the stop element to the longitudinal element at the selected position (friction).

Claim Rejections - 35 USC § 103

The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "the attachment means for attaching the stop element to the longitudinal element at the selected position is by welding the fiat washer to the rebar" claim 2, line 2 has been given only limited patentable weight. See MPEP § 2113.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over MontGuide as set forth in claim 1, above, and further in view of SARE.

Regarding claim 2, MontGuide discloses a T-post extender wherein the longitudinal element is a length of steel rebar, but fails to disclose the use of a flat washer as the stop element.

SARE teaches the use of a washer welded to a length of rebar as a stop element (page 5 "Control" second paragraph), to reduce cost. Accordingly, it would have been obvious to one skilled in the fence post art at the time of applicant's invention to modify the arrangement of MontGuide to use a washer welded to a length of rebar as a stop element as taught by SARE to reduce cost.

Regarding claim 3, MontGuide in view of SARE discloses a T-post extender wherein the longitudinal element is a length of steel rebar and the stop element is a washer, but fails to disclose that the rebar is 3/8 inch diameter and that the washer is a 1/2 inch washer.

However, a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). It would have been a simple matter of engineering design choice at the time of applicant's invention, to choose 1/2 inch diameter rebar for its increased strength and it would have also been obvious to choose a washer with a 1/2 diameter hole, to allow it to fit onto the rebar.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over MontGuide as set forth in claim 1 above, and further in view of Talt.

Regarding claim 11, MontGuide discloses a high fence support comprising a T-post extender in combination with a conventional steel T-post having substantially a T-

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shaped cross section, and positioned vertically relative to the T-post in its downward direction by gravity and by the stop element of the T-post extender and that the T-post extender is disposed adjacent the T-post at its upper end, but fails to disclose the use of wire ties to capture the T-post extender laterally.

Talt teaches the use of wire ties to fix the T-post extender to a T-post due to the ease of use and durability. Accordingly, it would have been obvious to one of ordinary skill in the fence post art at the time of applicant's invention, to modify the arrangement of MontGuide to use wire ties to secure the T-post extender to the T-post as taught by Talt for the purpose of ease of use and durability.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lavelly (US 697,259), Terry (US 755,413), Horvath (US 1,130,287), Reznicek (US 3,370,834), Sansbury (US 4,598,906), Sanford et al. (US 5,461,364) are cited for pertaining to fence post extension.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJM

DJM

10/14/2005



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